

# Tax Information Bulletin

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California State Board of Equalization  
P.O. Box 942879, Sacramento, CA 94279-0001

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## New Legislation – Delinquent taxpayers to be publicized, new penalty, thrift store exemption

The following summaries reflect legislative changes enacted in 2006 affecting the Sales and Use Tax Law administered by the Board. The changes are effective January 1, 2007, unless otherwise indicated. For copies of bills, please write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814, or go to [www.leginfo.ca.gov/bilinfo.html](http://www.leginfo.ca.gov/bilinfo.html).

**The Board will publicize the top 250 delinquent taxpayers.** Assembly Bill 1418 (Stats. 2006, ch. 716) requires the Board to make available, as a matter of public record each quarter, a list of the 250 largest sales and use tax delinquencies in excess of \$100,000. A delinquency is an amount of tax that is delinquent for more than 90 days for which a state tax lien has been filed. However, delinquencies that are under litigation, for which the taxpayer has filed bankruptcy or for which payment arrangements have been made, will not be included.

Before publicizing a tax delinquency, we must provide a written notice by certified mail, return receipt requested, to those liable for the tax. If within 30 days of issuance, the taxpayer does not pay the amount due or otherwise make arrangements with us for payment, the tax delinquency will be listed.

**New penalty for failure to remit sales tax or use tax collected when due.** Senate Bill 1449 (Stats. 2006, ch. 252) provides that any person who knowingly collects sales tax reimbursement, or use tax, and who fails to pay that tax reimbursement or use tax collected on the due date, shall be liable for a penalty of 40 percent of that amount.

The penalty will not apply to any person whose liability for the unpaid tax averages \$1,000 or less per month, or does not exceed five percent of the total tax liability for which the tax was collected for the period in which the tax was due, whichever is greater.

## Annual Taxpayers' Bill of Rights hearings to begin

Do you have suggestions for improving our services? Do you want us to look more closely at a tax or fee issue? If you do, come share your ideas and concerns with our board members at the annual Taxpayers' Bill of Rights hearings. You can present your proposal orally or in writing.

The annual business and property taxes hearings for 2007 will be held in Culver City on February 27 and in Sacramento on March 20, both at approximately 1:30 p.m. Although you are not required to make advance arrangements to speak, it would help us to prepare if you contacted the Taxpayers' Rights Advocate Office at 888-324-2798 beforehand to let us know your topic. If your proposal is complex or extensive, we encourage you to submit it in advance and then summarize it in your oral presentation.

For more details, please call the Advocate's office or visit us at [www.boe.ca.gov/tra/tra.htm](http://www.boe.ca.gov/tra/tra.htm), where you can also view the Advocate's 2005-06 annual report.

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### BOARD MEMBERS

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## California tire fee to stay at \$1.75 per tire

Sellers of new tires must register with our Excise Taxes Section and collect the California tire fee on every new tire sold. The fee will be \$1.75 per tire until December 31, 2015, after which it will drop to \$1.50 per tire. You can keep 1.5 percent of the tire recycling fees you collect as a reimbursement for your related costs. The fee itself is not taxable, but if you charge an amount higher than the required fee, that excess charge is taxable. For more information, please contact our Excise Taxes Section at 916-322-9534. You may also want to obtain a copy of publication 91, *Tire Recycling Fee*.

## A simple thank you will be appreciated

During the holiday season, many of you offer gifts to customers, suppliers, and others with whom you do business. We must ask, however, that you not extend your generosity to our employees. A simple "thank you" or "happy holidays" will do—and will be much appreciated. Policy prevents our employees from accepting gifts of any type. We appreciate your understanding.

## Small Business Fairs

No fairs are scheduled for November, December, and January.

To check for other upcoming fairs, please visit our website at [www.boe.ca.gov/sutax/tpsched.htm](http://www.boe.ca.gov/sutax/tpsched.htm).

## Use tax – the most frequent source of audit liability

Not well understood by many taxpayers, use tax continues to be the largest single area of tax liability found during taxpayer audits.

Auditors consistently find that taxpayers correctly reporting sales tax do not properly report their use tax. So taxpayers are surprised when an audit results in a significant amount of use tax liability. They often ask, "Why do we have a use tax law and how do we know when we owe use tax?"

After the sales tax was enacted in 1933, many people started making purchases out of state to avoid the sales tax. This was harmful to California retailers, who appealed to the Legislature for protection. As a result, the use tax was enacted in 1935.

What, generally, is subject to use tax? Any purchase of tangible personal property from an out-of-state retailer that will be used, consumed, given away, or stored without the payment of California sales tax is subject to use tax.

Use tax liability is most often incurred by either purchasing property that is not for resale from an out-of-state retailer who is not authorized by California to collect use tax, or by using property originally purchased with the intent for resale.

An example is a machine shop that purchases a new lathe from a manufacturer located in Ohio. If the manufacturer is not registered in California to collect use tax or is otherwise not responsible for collecting use tax on the transaction, the buyer is responsible for paying use tax on the cost of the lathe.

Assume again that another individual sells computers and

decides to use a computer taken from their resale inventory for purposes other than demonstration and display, while holding it for resale. That person is now responsible for paying use tax on the cost or purchase price of the computer to the individual.

If you find that you have purchases subject to use tax, report the amount of those purchases on line 2 when filing your *Sales and Use Tax Return*. If you have questions about purchases that you think may be subject to use tax, check publication 110, *California Use Tax Basics*, available from [www.boe.ca.gov/pdf/pub110.pdf](http://www.boe.ca.gov/pdf/pub110.pdf) or contact our Information Center at 800-400-7115.



## BOE-file. Watch it grow!

When BOE-file debuted in September 2005, many seller's permit holders had their first opportunity to e-file their sales and use tax returns with us at no charge. It is available for single location accounts not making prepayments or EFT payments.

In July 2006, we added an "EZ" return to BOE-file. We will soon be expanding to include single location accounts on a quarterly prepayment reporting basis. One of the services offered when e-filing is the ability to store your return and payment until the due date. We do the computations for you. Check our website, [www.boe.ca.gov](http://www.boe.ca.gov), for more details and the latest developments.

## Foreign travelers not allowed “tax refunds”

Some retailers are mistakenly telling their visiting foreign customers they can obtain a “sales tax refund” when they leave the country.

California does not provide a refund of sales tax paid by foreign travelers who take possession of their purchases in this state. Some foreign travelers have attempted to seek “sales tax refunds” at airports or other ports of entry, saying they were told they could get such a refund. If those travelers, or any out-of-state purchasers, took possession of their property in this state, even temporarily, then sales tax applies. It does not matter if the purchaser intends to ship or deliver the property to a foreign country, or if the individual actually transports the property to a foreign country.

Sales tax does not apply only when you sell merchandise to a purchaser for shipment abroad. The item must be shipped or delivered by you or a qualified carrier to the foreign country in a continuous route, without the purchaser using or taking possession of the merchandise until delivery. The property must be intended, at the time of sale, for a foreign country. The merchandise must be shipped or delivered by one of the following.

- In a vehicle operated by the retailer.
- In a carrier, forwarding agent, export packer, customs broker, or other person engaged in the business of preparing property for export, or arranging for its export.
- In limited circumstances, in a ship, airplane, or other conveyance furnished by the

purchaser to carry the property in a continuous journey to the foreign country, with the purchaser taking title to and control of the property upon delivery at the out-of-state destination. The transportation method and nature of the item shipped must provide certainty that the item is headed for a foreign country and will not be diverted for domestic use.

For more information and some examples of how these rules apply, see Regulation 1620, *Interstate and Foreign Commerce*, or view publication 104, *Sales to Residents of Other Countries*, at [www.boe.ca.gov/pdf/pub104.pdf](http://www.boe.ca.gov/pdf/pub104.pdf). Or call our Information Center at 800-400-7115.

## The term “medicines” is now more inclusive

The term “medicines” has been redefined to include any product fully implanted or injected in the human body, or any drug or biologic, when they are approved by the U.S. Food and Drug Administration (FDA) to diagnose, cure, mitigate, treat, or prevent any disease, illness, or medical condition, regardless of ultimate use. There are certain items specifically excluded from the definition of medicines (see below).

In the past, we have questioned whether certain products were considered medicines when they were used for cosmetic purposes. We concluded that making that determination would improperly require auditors to investigate a doctor’s practices and question the doctor’s judgment. So, under the revised definition of medicines, it is no longer necessary to determine the ultimate use of drugs and fully implanted or injected devices to determine if the products are considered medicines. For example:

- **Botox® and Botox® Cosmetic.** These products are injected biologics and are considered medicines under Regulation 1591. The FDA states that Botox® and Botox® Cosmetic are approved to treat moderate to severe frown lines between the eyebrows, a medical condition that is not serious. Accordingly, staff accepts that doctors only give patients injection of Botox® and Botox® Cosmetic when, in their judgment, they are treating a medical condition.
- **Breast Implants.** Breast implants are approved by the FDA for use in both reconstructive and cosmetic surgeries. Previously, staff considered breast implants to be excluded from the definition of medicines if the implants were used in purely cosmetic procedures. Under the revised regulation, breast implants are considered medicines regardless of the type of surgery performed.
- **Injected Collagen and Other Dermal Implants.** Injected collagen and similar products require FDA approval because they are injected under the patient’s skin. In general, these implants are approved by the FDA for the correction of skin contour deficiencies such as wrinkles and acne scars. Previously, we considered these implants to be medicines when used to correct scarring, but not when used to correct the appearance of lines and wrinkles from aging. Under the revised definition of medicines, these implants are considered medicines regardless of their ultimate use.

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## Excluded Products

Certain items are specifically excluded from the definition of medicines. As a result, sales and purchases of these items are generally taxable. For example, orthodontic, auditory, or ocular devices or appliances; products in the nature of splints, bandages, instruments, appliances, or equipment; and hospital beds (including specialized or therapeutic beds) are specifically excluded from the definition of medicine. The status of these products does not change under the recently revised definition of "medicines." In addition, the application of tax to other items such as catheters, IV sets, and topically applied substances are also not affected by the recent revisions.

The application of tax to sales of medical products can be complicated. Even when a product meets the definition of "medicines" certain requirements must be met in order for the sale to be exempt from tax. For more information about how tax applies to medicines, download a copy of Regulation 1591, *Medicines and Medical Devices*, at [www.boe.ca.gov/pdf/reg1591.pdf](http://www.boe.ca.gov/pdf/reg1591.pdf).

## New Legislation

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State law generally allows us to relieve penalties if we determine that the person's failure to timely remit the tax was due to reasonable cause or circumstance beyond their control, and occurred even though the taxpayer exercised ordinary care.

**AIDS/HIV thrift store exemption.** Senate Bill 1341 (Stats. 2006, ch. 373) extends, until January 1, 2012, the sales and use tax exemp-

tion for sales of used clothing, household items, or other retail items by thrift stores operated for purposes of raising funds to pro-

vide medical, hospice, or social services for individuals with AIDS or HIV. The exemption was to expire on January 1, 2007.

## New or revised reference material

### New Publication:

- 152 Cigarette and Tobacco Product Sales Compliance Inspections, August 2006

### Revised Publications:

- 11 California Energy Resources Surcharge Regulations, August 2006
- 15 Cigarette and Tobacco Products Tax Regulations, August 2006
- 42 Resale Certificate Tips, July 2006
- 50 Guide to the International Fuel Tax Agreement, June 2006
- 72 Summary of Constitutional and Statutory Authorities, August 2006
- 84 Do You Need a California Fuel Permit or License? July 2006
- 110 California Use Tax Basics, June 2006
- 116 Sales and Use Tax Records, August 2006

### New Translated Publications:\*

- 42-K Resale Certificate Tips, July 2002
- 42-C Resale Certificate Tips, July 2002
- 78-S Sales of Cigarettes and Tobacco Products in California, February 2006 Publication
- 91-S California Tire Fee, January 2005
- 102-S Sales to the U.S. Government, May 2005
- 107-K Do You Need a California Seller's Permit, March 2005

### Revised Translated Publications:\*

- 52-S Vehicles and Vessels, May 2005
- 70-S Understanding Your Rights as a California Taxpayer, November 2005
- 73-C Your California Seller's Permit, May 2004
- 103-S Sales for Resale, August 2005
- 104-S Sales to Residents of Other Countries, May 2005
- 105-S District Taxes and Delivered Sales, June 2005
- 107-S Do You Need a California Seller's Permit, March 2005
- 108-S When is Labor Taxable, August 2005
- 110-S California Use Tax Basics, August 2005
- 115-S Applying Sales Tax to Tips and Related Payments, August 2005

\*C-Chinese, K-Korean, S-Spanish

## For More Information

All telephone numbers are toll-free

<b>Internet</b>	www.boe.ca.gov ■ www.taxes.ca.gov
<b>Information Center</b>	800-400-7115 ■ TDD/TTY: 800-735-2929
<b>Requests for Fax Copies</b>	800-400-7115 (Choose automated services)
<b>Seller's Permit Verification</b>	888-225-5263 ■ www.boe.ca.gov
<b>Taxpayers' Rights Advocate</b>	888-324-2798 ■ www.boe.ca.gov
<b>Tax Evasion Hotline</b>	888-334-3300
<b>State Legislation</b>	www.leginfo.ca.gov/bilinfo.html